

Introduced by Senator McClintock

January 11, 2006

Senate Constitutional Amendment No. 20—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 19 of Article I thereof, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SCA 20, as introduced, McClintock. Eminent domain: condemnation proceedings.

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings upon deposit in court, and prompt release to the owner, of the money determined by the court to be the probable amount of the just compensation.

This measure would further provide that private property may be taken or damaged only for a stated public use and not without the consent of the owner for purposes of economic development, increasing tax revenue, or any other private use, nor for maintaining the present use by a different owner. The measure would also require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use.

This measure would also provide that if the property ceases to be used for the stated public use, the former owner would have the right to reacquire the property for its fair market value. This measure would further require a county assessor, upon property being so reacquired, to appraise that property for purposes of property taxation at its

adjusted base year value as had been last determined at the time the property was acquired by the condemnor.

This measure would define “just compensation” for purposes of condemnation and specify the showing required in an action challenging the validity of a taking.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

1 WHEREAS, This measure shall be known and may be cited as
2 “The Homeowners and Private Property Protection Act of 2006”;
3 and

4 WHEREAS, The Legislature finds and declares all of the
5 following:

6 (a) Our California Constitution provides that all people have
7 inalienable rights, including the acquisition, possession, and
8 protection of property and that no person shall be deprived of
9 property without due process of law.

10 (b) Our California Constitution further provides that private
11 property may not be taken or damaged by government except for
12 public use and only after just compensation has been paid to the
13 property owner.

14 (c) Notwithstanding these clear constitutional guarantees, state
15 and federal courts have not protected these rights from
16 encroachment by state and local government through the exercise
17 of their powers to take private property for the use or gain of
18 another private owner or owners.

19 (d) The decision of the United States Supreme Court (*Kelo v.*
20 *City of New London*) on June 23, 2005, permitted a city to
21 exercise its power of eminent domain to take private property for
22 the purpose of transferring ownership to a private developer,
23 which means that Californians no longer have any federal
24 protection against their property being taken for the private gain
25 of others.

26 (e) Furthermore, the judicial processes available to an owner
27 of property to obtain just compensation when his or her property
28 is taken for a legitimate public use are burdensome, costly, and
29 unfair; and

30 WHEREAS, The Legislature further finds and declares all of
31 the following:

1 (a) State and local government shall be limited to using its
2 powers to take private property only for public uses, such as
3 roads, schools, parks, and public facilities. Private property must
4 not be taken from one owner and given to another private owner
5 for any reason unless the original owner is a willing seller.

6 (b) When state or local government takes private property for
7 public purposes, the owner shall receive just compensation for
8 what has been taken or damaged. If the owner and the
9 government are unable to agree to a fair price, the owner shall be
10 entitled to a fair and efficient judicial process to determine the
11 appropriate amount for the government to pay as determined by a
12 jury; now, therefore, be it

13 *Resolved by the Senate, the Assembly concurring,* That the
14 Legislature of the State of California at its 2005-06 Regular
15 Session commencing on the sixth day of December 2004,
16 two-thirds of the membership of each house concurring, hereby
17 proposes to the people of the State of California that the
18 Constitution of the State be amended as follows:

19 First—That Section 19 of Article I thereof is amended to read:

20 SEC. 19. (a) Private property may be taken or damaged *only*
21 *for a stated public use and only when just compensation,*
22 *ascertained by a jury unless waived, has first been paid to, or into*
23 *court for, the owner. Private property shall not be taken or*
24 *damaged without the consent of the owner for purposes of*
25 *economic development, increasing tax revenue, or for any other*
26 *private use, nor for maintaining the present use by a different*
27 *owner. The Legislature may provide for possession by the*
28 *condemnor following commencement of eminent domain*
29 *proceedings upon deposit in court and prompt release to the*
30 *owner of money determined by the court to be the probable*
31 *amount of just compensation.*

32 (1) *“Just compensation” includes, but is not limited to, the*
33 *cost of acquiring comparable property; all costs and losses*
34 *incurred due to the condemnation, including, but not limited to,*
35 *loss of income, loss of business good will, and relocation costs;*
36 *and attorney’s fees upon determination that the amount offered*
37 *by the public agency was less than the amount ascertained by the*
38 *jury, or the court if a jury is waived.*

39 (2) *Possession of the money so deposited may be taken without*
40 *prejudicing the right to challenge the amount of compensation.*

1 **(b)** *Property taken by eminent domain shall be owned and*
2 *occupied by the condemnor, or by another governmental agency*
3 *by agreement with the condemnor, or leased to entities that are*
4 *regulated by the Public Utilities Commission. All property that is*
5 *taken by eminent domain shall be used only for the public use*
6 *stated at the time of the taking, except for limited purposes,*
7 *public or private, that are incidental to that use.*

8 **(c)** *When property taken by eminent domain ceases to be used*
9 *as stated at the time of the taking, or fails to be put to that use*
10 *within 10 years, the former owner shall have the right to acquire*
11 *the property at fair market value. Notwithstanding subdivision*
12 *(a) of Section 2 of Article XIII A, upon reacquisition the property*
13 *shall be appraised by the assessor for purposes of property*
14 *taxation at its base year value, with any authorized adjustments,*
15 *as had been last determined in accordance with Article XIII A at*
16 *the time the property was acquired by the condemnor.*

17 **(d)** *In any action challenging the validity of a taking under this*
18 *section, the person challenging the taking shall not be limited to*
19 *review of the administrative record and the court shall not afford*
20 *deference to any legislative finding by the condemnor. The*
21 *person challenging the taking shall be entitled to an award of*
22 *attorney's fees from the condemnor if the court finds that the*
23 *condemnor's actions are not in compliance with this section.*

24 **(e)** *This section does not apply to asset forfeiture upon*
25 *conviction of a crime in a manner prescribed by law.*

26 **Second**—Section 19 of Article I, as amended herein, shall be
27 self-executing and shall apply to all condemnation actions
28 commenced or pending after June 23, 2005. The Legislature may
29 adopt laws to further the purposes of Section 19 and aid in its
30 implementation. No amendment to Section 19 may be made
31 except by a vote of the people pursuant to Article II or Article
32 XVIII of the California Constitution.

33 **Third**—The provisions of Section 19 are severable. If any
34 provision of Section 19 or its application is held invalid, that
35 invalidity shall not affect other provisions or applications that can
36 be given effect without the invalid provision or application.